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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,) In Equity Case No. C-125
13)
14 Petitioner,)
15)
16 vs.) MOTION TO ALLOW TARDY FILING OF
17) OPPOSITION TO PETITION
18) OF THE WALKER RIVER PAIUTE TRIBE FOR
19) APPROVAL OF STATE ENGINEER'S
20 WALKER RIVER IRRIGATION)
21 DISTRICT, a corporation, et., al.,) RULING NO. 5746
22)
23 Defendants.)
24)
25)
26)
27)
28)

29 COME NOW, Defendants' Joseph and Beverly Landolt, by and through their local
30 attorney, William E. Schaeffer, Esq. and respectfully request that this Honorable Court allow the
31 tardy filing of the previously filed Opposition to stand for the reason that said local counsel did
32 not receive the Tribe's Petition nor the Court's Order granting the abbreviated briefing schedule
33 until Monday, July 16, 2007 which was the same day that said Opposition was due according to
34 said Order. Further, despite the short notice, said Defense Counsel prepared and faxed a copy of
35 said Opposition to the Tribe's Attorney, Wes Williams, before 5:00pm on July 17th. Said
36 Defense Counsel also attempted to file the Opposition electronically on that date but could not
37 figure out how to do it. There ensued several days of e-mail exchanges with this Court's
38 personnel first in Las Vegas and then in Reno before, with the kind help of a clerk named Amber
39 Freeman, the undersigned Defense Counsel was able to figure out how to electronically file
40 documents with this Honorable Court.

41 The Landolts also ask this Court to ignore and/or strike any objections to the tardy filing
42 raised by anyone other than the parties of record before the State Engineer in regards to Ruling

1 No. 5746. Despite the fact that we are in Federal Court and despite the fact that we got here by
2 way of a petition by the Tribe, this is in fact and intention an appeal of the State Engineer's
3 decision. Such appeals are governed by NRS 233B.130 et seq. NRS 233B.130 limits
4 participation in such an appeal to the responding agency (here, the State Engineer) and "all
5 parties of record to the administrative proceeding." Since the Landolts' protest was separate
6 from the other protests involved (except insofar as it or they referenced each other) that would
7 limit participation to just those involved in the Landolt protest which - to this writer's knowledge
8 and understanding - would include only the Tribe and arguably the Circle Bar N Ranch.
9 Subsection 5 specifically provides that the "court shall ... dismiss from the proceeding any
10 agency or person who ... was not a party to the administrative proceeding" below. Accordingly,
11 no one should be heard to object to the lack of timeliness or other deficiency of the Landolts'
12 Opposition to the Tribe's Petition except the Tribe. However, the Tribe was not damaged by said
13 untimeliness since its Counsel was faxed a copy in a timely manner.

14 WHEREFORE, Defendants Joseph and Beverly Landolt, respectfully request this
15 Honorable Court to allow the tardy filing of the Landolts' Opposition to the Petition of the
16 Walker river Paiute Tribe for Approval of the State Engineer's Ruling No. 5746.

17
18 DATED this 25th day of July, 2007

19 WILLIAM E. SCHAEFFER
Attorney for Joseph and Beverly Landolt